LAW INTELLIGENCE.

THE MURDER OF EUGENE ANDERSON.

NO VERDICT—DISCHARGE OF THE JURY.

The first trial of Michael Cancemi, who was indicted for the alleged murder of Eugene Anderson, was concluded at 11 o'clock yesterday morning—the Jury failing to agree upon a verdict.

Judge Roosevelt appeared in Court at the usual hour, and soon after the Court was formally opened by the Officer, Judge Roosevelt announced that his presence was required in the General Term of the Supreme Court, where, on account of the importance of the case that was to be there argued (the Lemon slave case), it was deemed advisable that the full bench of five judges sit on the hearing. In the case which was on trial before him, he said that he had received a communication from the jurors as follows:

To His Honor the Judge of the Court of Oyer and Terminer:

The Jurors in the case of Michael Cancemi are still unable to agree. The case has received their full and careful consideration, but, since their last communication to your Honor, yesterday noon, they have not spent five minutes in discussing the merits of the evidences in the case; it, therefore, is evident that the Jurors have conclusively made up their minds without any prospect of change. Under these circumstances they feel themselves deprived of personal liberty, without, in any way, serving the cause of justice. At the same time, they would ask your Honor to consider the present embarrassed state of the mercantile community, and they assure you that, being deprived of the power of giving personal attention to their own affairs, in the present trying hour, some of them are pecuniary sufferers to a great degree.

One of the Jurors has a member of his family extremely sick, requiring the care of two physicians, and his absence from his family this day is an event of extreme anxiety and inconvenience.

The Jurors hope that the considerations mentioned, as well as many others which must present themselves to your mind, will cause your Honor to view favorably their condition, and they earnestly and most respectfully ask your Honor to relieve them from their present painful confinement.

W. BAILEY LANG, Foreman.

Having read the communication, Judge Roosevelt said that, having formed an impression after two days' confinement of the Jury, that there was was no possibility of their attaining a unanimity of opinion, he had come to the conclusion that it would not be proper to keep them together longer; but, not wishing to rely wholly upon his own opinion in the matter, he had submitted his conclusions to the other Judges of the Supreme Court to take their advice, and they had fully concurred in the conclusion to which he had arrived at. He stated this, in addition to the considerations which were expressed in the communication of the Jury, as being reasons why the request should be granted.

Mr. Hall asked if he understood the Jury in their communication to say that since 3 o'clock yesterday they had had no discussion upon the merits of the case.

Judge Roosevelt—None upon the evidence.

Mr. Hall—Then I should be doing injustice to the community to ask that such a Jury be any longer kept together.

Judge Roosevelt—I must say, gentlemen, that the Jury which has sat in this case are presumed to be intelligent men, who have minds of their own; they together, with the Judge, form component parts of the Court, and I think they are entitled to proper deference in their conclusions, whatever they may be, when the Court has no reason to suppose, as in this instance, that they are actuated by improper motives. The Jury seem to be an extremely intelligent body of men. I have seldom seen in this jury-box those who were more so, and it is not for me to attempt to force them to a conclusion; I would suggest, however, as it may save a great deal of time (as the issues by the course that was taken by the counsel for the defense is narrowed down to a mere moment of time and a very narrow space), that if there is to be another trial, which I suppose there must be, it should be had immediately.

Mr. Hall—It would be almost impossible to do so. There must be time given for the subsidence of the popular excitement upon the subject. The papers have flooded the particulars of this trial all over the community, and they are fresh in the minds of everybody.

Judge Roosevelt—It will be seen that there is nothing in issue, except as to what took place within a period of a very few minutes. It is admitted by the counsel for the defense that the prisoner was the person who ran, and who was traced through these various streets until he reached his domicil, and that he was the person who entered the house in that particular way. Was there or was there not on this occasion any other person on that spot, who by any evidence that can be introduced could by any likelihood be shown to be the perpetrator of this deed? The issue is narrowed at once to that single point.

Mr. Hall—The prosecution has never had a case which has required more time to collect the evidence. The alleys and streets along the route through which the prisoner ran have been fairly swept to get at all the facts.

Mr. Blankman—Yes; I have no doubt they have.

Mr. Hall—But as there is no question before Court except that of the discharge of the Jury, I cheerfully concede the request.

A messenger here arrived with a note to Judge Roosevelt.

Judge Roosevelt (after reading the note)—The Judges in General Term have sent for me, and wish my attendance with them below unless I am necessarily detained here. The officer will therefore bring in the Jury.

At 10½ o'clock the Jury came in and took their seats. The Clerk proceeded to call their names, to which they severally answered.

Judge Roosevelt said: The Court has received your announcement, gentlemen, and participates in the embarrassment of your position. Before receiving it, I had apprehended that some such result would follow, and this morning, having heard that you did not agree, I submitted my conclusion to two of my colleagues in the Court below. They both concurred in the conclusion that I had arrived at, which was, that it would be useless, and, perhaps, injurious to attempt to force you any longer (if it can be called forcing, by keeping you in confinement) in arriving at a unanimity, which you seem unable to attain by the ordinary course of consultation and reasoning with each other. It would have been very desirable that the case should have been finally disposed of on this trial, but there are undoubtedly, in this life, things which are morally, as well as physically, impossible, and it is not to be supposed that the minds of men can be forced to agree. The system that prevails here, unlike that which exists in some foreign countries, requires absolute unanimity in the conclusions of the Jury. In some countries a concurrence of nine out of the twelve Jurors is only required for a verdict after they have been out a certain length of time; but here we must have absolute unanimity of opinion, in accordance with the requirements of the old common law. Under these circumstances, although we see the difficulty which arises out of your disagreement, yet, at the same time, we sympathize with you in the inconvenience that you must have experienced, and I have to thank you for the impartial and laborious manner in which you have discharged your duties; I only regret that you are unable to agree upon a verdict. You are now discharged absolutely for the term. Should the Court deem it necessary to retry this cause during the term, another Jury will no doubt be called, as I presume it would not be desirable to bring the issue before you again for further trial.

Mr. Lang, the foreman, stated that he desired to say a few words in behalf of his fellow-jurors, which they had requested him to do, and which he would cheerfully concur in as being the expression of his own feelings. Although they had been rather hardly treated by the officers, who cut them off from all communication between themselves and those outside, and from all information, yet they wished to return to them their sincere thanks for the kindness otherwise that they had manifested. Whenever they had expressed any desire for any necessary comforts they had been cheerfully afforded.

THE CONSULTATION OF THE JURY.

The Jury retired, after the charge of the Court, at 5 o'clock on Tuesday night, and at once proceeded to ascertain their respective views upon the guilt or innocence of the prisoner, as developed by the evidence which had been elicited on the trial. A ballot was taken twenty minutes after they retired, with the following result:

James Courtney, shoe-dealer, No. 50 Grand street, not guilty.
Wm. H. Bolton, oyster-dealer, No. 203 South street, guilty.
Thos. Haight, No. 209 Ninth avenue, guilty.
Samuel D. Arthur, provision-dealer, No. 766 Greenwich street, guilty.
Anson Hubbard, dry goods dealer, No. 7 Bond street, guilty.
John F. Browne, harp manufacturer, No. 281 Broadway, not guilty.
Erastus Littlefield, expressman, No. 72 Broadway, guilty.
Charles Alden, preserve-manufacturer, No. 11 Old Slip, guilty.
Alonzo Taylor, machinist, No. 107 Elm street, guilty.
Jacob D. T. Hersey, straw-goods dealer, No. 130 Broadway, not guilty.
W. Bailey Lang, iron-dealer, No. 54 Cliff street, not guilty.
James Malcolm, builder, No. 142 Mulberry street, guilty.

The Jury, finding so great a diversity of opinion, immediately commenced consulting and comparing their recollections of the evidence, with the view of arriving at an agreement. After an hour's consultation, they divided, and found that they stood as they had on the ballot.

The entire night was passed in discussing the bearings of the evidence. The discussion turned almost wholly upon the weight to be given to the evidence of the German, Lauth, and the colored girl, Ann Elizabeth Smith, the majority of the Jury insisting that Lauth had distinctly stated that he saw the firing and saw the man who fired running from the spot, and had a view of his face as he passed him, so that he was able to identify him as the prisoner on trial. It was stated by the Jury that, if it could be shown that Lauth distinctly swore thus, it would remove any misgivings the minority had as to the guilt of Cancemi. When the Court was opened on Wednesday morning, a request was sent for the testimony of Lauth, both on the trial and before the Coroner's Jury.

The request was granted and THE TRIBUNE's report of the evidence of Lauth was sent to the Jury.

The evidence of Louth, as it affected the disputed points was as follows:

I saw after 4 o'clock, when I was dragging my hand-cart on Centre street a policeman coming, the policeman jumped quickly from Centre street to Grand street; then a man came from Centre street on an angle to Grand street, and he came very near to the policeman and fired a pistol at him; * * * then the man who shot him ran near my cart through Grand to Elm street, and I afterward went on and did not see anything more; when the man passed me, he took the pistol from one hand into the other and put it in his pocket; when he got to Elm street he ran down toward Canal street.

Q. Who is the man who shot? A. I do not know him; he was a man with black whiskers; I do not know as he had a mustache; he was about the size of the interpreter [short and full].

Q. Have you seen the man since? A. Yes, the very same day in the Station-House; the man ran within four to five paces from my cart; between two and three paces; I should say very near to it, in fact; I was going from the Bowery toward Elm street; I stopped my cart perhaps for a moment, and then went on; * * * I next saw the man who shot at the officer in the Tombs when they brought him back, and soon after a policeman took me in charge and brought me to the Station-House.

Witness cross examined by Mr. Blankman—It was some time after 4 o'clock—I can't tell when—that this occurrence took place; Anderson came across Centre street to the angle of Grand street, where he was shot; when the shot was fired, I could not see the man fire, but as soon as he shot he turned round, and I saw his face. * * * I was scarcely a house distant from the spot when the shot was fired; I was in the middle of Grand street toward Broadway.

A Juror—Have you seen the man who shot Anderson in this room?

A. No, Sir.

Mr. Blankman—Let the witness stand up and see.

Witness [standing up]—I see him—the dark man.

Mr. Phillips—Point him out. [The witness pointed out the prisoner.]

Witness [resuming]—I have been here since Monday; I was in the rear of the room during the progress of this trial; another man, who was to be also a witness, was with me; there was nobody who pointed out the prisoner to me yesterday; I spoke about him yesterday and the day before several times to the other witness, and we saw him at the time.

After the evidence was read, Mr. Hersey said he was satisfied that the identity of the prisoner with the man who shot, was sufficiently proven to satisfy him, and on a division of the Jury being taken, he changed his vote from not guilty to guilty, but Mr. Malcolm, one of the Jurors who had previously believed in the guilt of the prisoner, had, upon a further consideration, come to the conclusion that it was not fully established. They continued to discuss the matter until Wednesday afternoon, and finding there was no possibility of an agreement, the subject was, by general consent, dropped, and when they came into Court yesterday morning, they stood as follows:

For the verdict of Guilty:
Messrs. Bolton, Haight, Arthur, Hubbard, Littlefield, Alden, Taylor and Hersey.

For a verdict of Not Guilty:
Messrs. Courtney, Browne, Lang and Malcolm.

One of the Jurors who voted "Not guilty" offered a resolution before coming into court, to suppress the facts connected with their discussions, and especially the names and votes of jurors on the divisions. It was not agreed to.

SUPREME COURT—GENERAL TERM—Oct. 1.—Before all the Judges, MITCHELL, ROOSEVELT, CLERKE, DAVIES, and PEABODY.

The People ex rel. Louis N. Bonaparte vs. Jonathan Lemmon, appellant.

This case came on this morning. At the opening of the Court, Mr. John Jay, as *amicus curiæ*, read a paper suggesting to the Court that they had no right to hear the appeal, it being a case in which the parties had no interest and consequently not entertainable under the Code. His statements were as follows, though not verified by affidavits: When the slaves were set free some years ago a subscription was raised to purchase them. Mr. Lemmon entered into a contract that if the judgment of the Superior Court were reversed, and the negroes ordered back to his custody, he would sell them for the sum raised. Moreover, the slaves are now in Canada, out of the reach of any extradition process. Mr. Jay contended that both by the fact of their being out of the United States, and by the above-mentioned contract, Mr. Lemmon, even were this suit determined in his favor, would gain nothing, and consequently was not a party in interest. The suit was in reality between the States of New-York and Virginia, neither of them having an interest in the sense of the Code, but contending to establish a general principle. Such a case the Court cannot entertain under the Code. Moreover, it would be unjust to future parties, since they would be bound by this decision, and precluded from applying for relief upon an actual state of facts and in the tribunal of their choice.

To this Mr. O'Conor replied that he had a right to decline answering the above suggestions until they were verified by oath, and an order was made by the Court requiring him to show cause why the case should not be dismissed. But waiving this, he urged that the parties had an interest in this suit. Mr. Lemmon's contract of sale was executory and conditional. He had not parted with his right in the negroes. Even suppose they were in Canada and out of his reach, yet a judgment in his favor would establish his right to them, and he was thus interested in the suit. Further, were the appeal sustained, Mr. Lemmon might execute the contract of sale and obtain the price of the slaves. If the decision was against him he could receive nothing. Here was certainly a substantial interest in the issue of this case. Again, even had the contract of sale been executed, yet Mr. Lemmon who made it had no right according to our law to dispose of the negroes. They were Mrs. Lemmon's, and are so still. The counsel for the people had themselves admitted the right of the Court to entertain this appeal by taking measures in reference to the security for its prosecution.

And there is a further answer to the suggestions of Mr. Jay. The Legislature of the State of New-York, knowing all the facts, passed a resolve that this case should be contested by the People. The Executive concurred in this by taking the steps required. Does not this concurrence of the two law-making departments of the Government amount to a repeal of the provision of the Code relating to the interest of parties, in this particular case, or an exception of this case from the general rule? And lastly, the rights of future suitors cannot be injured. For the State can surely employ more effectual means to vindicate and establish the general principle contended for by the People, than any private individual in any suit that may arise hereafter.

The Court decided that Mr. Lemmon's contract of sale being only executory he still had an interest and could prosecute the appeal. It was intimated that had the sale been absolute the decision would have been otherwise.

The case then proceeded to argument. The facts are as follows:

In November, 1852, Jonathan Lemmon and Juliet his wife, having been before that time residents and citizens of the State of Virginia, brought eight colored persons to this city, intending to take passage with them immediately to Texas. A writ of habeas corpus was sued out before Mr. Justice Paine of the Superior Court in behalf of the negroes thus being *in transitu*. The above facts were returned as the cause of their detention—to the sufficiency of which the People demurred. The demurrer was sustained on argument, and the negroes set free. Mr. Lemmon brought the proceedings into this Court by *certiorari*.

Mr. O'Conor began and finished his argument for Mr. Lemmon. He spoke about three hours. Mr. Evarts then spoke until 3 o'clock, when the Court adjourned till to-morrow, when he will conclude. Mr. Blunt will follow on the same side, and Mr. O'Conor reply.

Below we give the points of the three counsel:

MR. O'CONOR'S POINTS.

First Point—The ancient general or common law of this State authorized the holding of negroes as slaves therein. The Judiciary never had any Constitutional power to annul repeal or set aside this law: and, consequently, it is only by force of some positive enactment of the legislative authority that one coming into our territory with such slaves in his lawful possession, could suffer any loss or diminution of his title to them as his property.

1. In every argument and judicial opinion relating to the subject, it is admitted that Slavery existed at an early period under the municipal law, and was recognized by statute in this State. (Colonial slave act of N. Y., March 8, 1773. Jack v. Martin, 12 Wend. 328. Jackson v. Bulloch, 12 Conn. R. 42. Ib. 61. Comth v. Aves, 18 Pick 208 9. Per Cur. Scott v. Sandford, 19 How. 407-8. Per McLean J., 16 Peters 660-15 Ib. p. 507.)

II. Negro Slavery never was a part of the municipal law of England, and consequently the inflated speeches of French and British judges and orators touching the purity of the air and soil of their respective countries, whatever other purpose they may serve, are altogether irrelevant to the inquiry what was or is the law of any State in this Union on the subject of Negro Slavery. (See French Eloquence A. D. 1738, 20 State trials, 11 Note. See English Eloquence A. D. 1762, 2 Eden's R. 127, Lord Nothington. See English Eloquence A. D. 1765, 1 Bl. Com. 127, 124. See English Eloquence A. D. 1771, 20 State trials, 1 Lord Mansfield. See Scotch Eloquence A. D. 1778. Ib. p. 6 Note. See Irish Eloquence A. D. 1783, Rowan's Trial, Curran. See Judge McLean's criticism in Dred Scott 19 How. 535. See Stowell's criticism, 2 Hagg Ad. R. 109.)

1. The only argument against negro Slavery found in the English cases at all suitable for a judicial forum rests on the historical fact that it was unknown to the English law. Mr. Hargrave in Somersett's case showed that white Englishmen were alone subject to the municipal slave laws of that country at any time; that negro Slavery was a new institution which it required the legislative power to introduce. (20 State Trials, p. 55. Com. v. Aves, 18 Pick 214.)

2. Lord Holt and Mr. Justice Powell were Mr. Hargrave's high authority for the proposition that while the common law of England recognized white English slaves or villeins and the right of property in them; yet it "took no notice of a negro." That a white man might "be a villein in England," but "that "as soon as a negro comes into England he became free." It was only negro liberty that the know-nothingism of English and French law established. English and French air had not its true enfranchising purity till drawn through the nostrils of a negro. White slaves had long respired it without their status being at all effected. (Smith v. Brown 2 Salk. 666. 20 State Trials, 55 Note.)

3. Lord Mansfield said in Somersett's case: "The state of "Slavery is of such a nature that it is incapable of being intro- "duced on any reason moral or political, but only by posi- "tive law," and negro philism has been in raptures with him ever since. Nevertheless it was a bald inconsequential truism. It might be equally well said of any other new thing not recognized in any known existing law. (Per Ashhurst T 3 T. R. 63.)

III. The Judiciary never had power to annul, repeal or set

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448; Greenwood vs. Curtis, 6 Mass., Rep. 366; Case of the Antelope, 10 Wheaton, 420; Jones vs. Wheaton, 2 McLean, 596.

The English common law, as adjudicated before and since our Revolution, adjudges them to be free.

By the principles of the law of nations, as expounded by the philosophers and jurists of various countries, and recognized by all Christendom, they are free.

The Constitution of the United States does not, by any express terms, deliver them to Slavery.

No implication can be drawn from any provision of that instrument to remand them to Slavery.

The laws of this State declare them free.

In behalf of their freedom, we urge the common jurisprudence of all nations; the principles of our own common law; the doctrines of the founders of our Government; the legislation of our State; the public opinion of the world; and we deny, on the part of the people of the State of New-York, that these persons, claimed as slaves, can be deemed as such in our courts of justice.

About forty students presented themselves for admission to the Bar on Wednesday afternoon. The examination was oral, and its result will be declared this morning at the opening of the Court.

THE SUPREME COURT CIRCUIT CALENDAR for to-morrow will not then be called because of the absence of Judge Roosevelt at General Term. On Monday, Justice Mitchell will call it and go on with the trial of causes.

SUPREME COURT, GENERAL TERM.—The non-enumerated Calendar will be called when the Lemmon case is concluded. The General Calendar will not be called again this term.

UNITED STATES DISTRICT COURT—Oct. 1.—Before Judge BETTS.

The Grand Jury this morning brought in the following Bills of Indictment:—Against Antoine Riesldi, for passing counterfeit coin; John Ferris, John Kipp and Henry Oelsler, for smuggling; Robert Kane, smuggling; William Cline, assault with dangerous weapon; John Mikes, smuggling; Louis Hartman, smuggling. The Court adjourned at an early hour. On Friday the case of the Merchant comes on, and the trial of Edward O'Brien and Thomas Henry for endeavoring to make a revolt on board the American ship Hero, will take place.

UNITED STATES COMMISSIONER'S OFFICE—Oct. 1. Before BETTS, Commissioner.

Walter L. Schutz, pilot of the steam-tug Smith, was again held to bail in the sum of $3,000 on another charge of smuggling.

COURT OF COMMON PLEAS—CHAMBERS—Oct. 1. Before Judge DALY.

Siegmund R. Mendel, Assignee of A. L. Leo & Brothers agt. Mark Dale.—Motion to discharge arrest denied.

COURT OF SPECIAL SESSIONS—Oct. 1.—Before Justices OSBORN and CONNOLLY.

This Court opened this morning with fifty-one cases on the calendar—40 prison cases, 1 suspended case, and 10 bail cases. Samuel Platt, of the prison cases, was arraigned for attempting to steal on the 25th of Sept. a watch worth $5, from Geo. Long, No. 6 Clinton street. Accused tried to take the watch from deponent while he was looking at a procession, when deponent arrested him. Found guilty, and sent to the Penitentiary for six months.

Patrick Quinn stole a bag of wheat, worth $4, from James Wells, No. 443 Grand street. He was caught in the act. Sent to the Penitentiary for three months.

John Gallagher was arraigned for a cruel assault and battery on his wife Catharine Gallagher, No. 55 Baxter street, on the 27th September. The accused was said to be in the habit of getting drunk and beating his wife shamefully. Sent to the Penitentiary for six months.

Thos. Keeser was arraigned for assault and battery, on the 27th September, on Margaretta Wingeser, No. 255 Fulton street. The accused is a waiter in the Franklin House, and he was charged with striking the deponent in her face and against her body while holding her against a wall. Sent to the Penitentiary for three months.

Wm. Williams, Joseph Farrell and Samuel Lester, arraigned for stealing on the 25th of Sept., a quantity of suet worth $25, from the steamship Baltimore, on the complaint of John Myerhouse, were discharged on condition of their going to sea.

Sarah Fenning was arraigned for assault and battery, on the 28th of Sept., in that she did slap in the face Daniel Smith, of the 26th Precinct Police, and interfered with him in the discharge of his duty. Fined $10.

John Price, Thos. Price and Christy Maher, boys, were arraigned for stealing, on the 29th of September, three pair of boots, worth $8, from Thos. H. Perry, No. 460 8th-av. These boys pleaded guilty to the charge, and were found in possession of the boots by Officer Cornwell. Sent to the house of refuge.

Patrick McNulty was charged with stealing, on the 29th of September, from Eliza Parker, No. 878 Broadway, a cloak worth $5. Defendant was caught carrying away the cloak concealed under his cloak. Convicted, and sent to the Penitentiary for 6 months.

Philip McCorkey was arraigned for assault and battery, on the 29th of September, on John Lohman, No. 350 West Twenty-ninth street. Found guilty, and remanded to Saturday.

The case of Lucas Wesley, charged with assault and battery, and that of Ellen Crouira, charged with stealing 30 cents in silver coin, were put over till Saturday.

The case of Mary Wiggins, for assault and battery on Mary Marony, No. 14 Baxter street, was withdrawn.

Chas. Burke was arraigned for stealing, on the 29th of Sept., an oilcloth and overcoat with $1, from Matthew Holland, No. 519 West street. He was detected with the property. Sent to the Penitentiary for two months.

John Smith, charged with stealing a coat, vest, cape and two pair of shears, worth in all $6 75; and Margaret Bush, arraigned for assault and battery on Daniel McDonald, No. 58 Park street, were both convicted and their sentences suspended.

Otto Friedet was arraigned for stealing, on the